



ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE

653^d TRIAL DEFENSE TEAM, WEST REGION
UTAH NATIONAL GUARD
12953 Minuteman Way, P.O. Box 1776
Draper, Utah 84020-1776



REPLY TO
ATTENTION OF

NGJA-UT-TDS

6 March 2011

MEMORANDUM FOR Utah National Guard Personnel

SUBJECT: General Military Justice Rights and Right to Counsel

1. SUMMARY. If you are suspected of committing a crime (e.g., you are apprehended by the police or called into your commander's office), or anyone reads you your rights, this fact sheet applies to you and you have a right to an attorney. However, this fact sheet applies only to military justice situations and does not apply in situations with civilian law enforcement. For more information on Trial Defense Services, or to request defense counsel, review the 653d Soldier's Information Memorandum, available at www.ut.ngb.army.mil/jadtds/default.htm.

2. THE BASIC RULE: DONT SPEAK TO ANYONE WITHOUT YOUR ATTORNEY PRESENT. The Constitution, state law, and the state and military rules of evidence guarantee suspects the right not to be questioned by police and military authorities without an attorney. This right helps to ensure that you do not become the prosecutor's key witness at your own court-martial or Article 15 hearing. **You are entitled to be assisted by a military defense counsel** at no cost to you or you may retain a civilian attorney at your own expense. Generally speaking, if you say you are not willing to speak with government representatives, then they may re-engage and speak with you only after a reasonable period of time has lapsed. If you ask for an attorney and do not obtain an attorney within 14 days, the government representatives are likely free to re-engage and speak with you again.

3. WHAT TO DO IF YOU ARE QUESTIONED. If you are read your rights and questioned, you should give your questioner your name and unit, and show them your ID card. Then, you should inform them that you do not wish to speak with them without an attorney. When you do this, all questioning must stop. If questioning does not stop, continue to remain silent. Do not lose your composure or be otherwise tricked into saying anything to anyone.

4. WHAT TO EXPECT. Once you ask for an attorney, most police and military officials will immediately stop asking you questions. However, some may encourage you to talk to them alone. For example, they may tell you that only guilty people ask for a lawyer, which is simply not true. Remember, the person questioning you is trying to get information and believes you are guilty. Do not be fooled. Continue to ask for an attorney and do not answer questions. If you later go back and initiate a conversation with the police or military representatives after asking for an attorney, then you are likely waiving your earlier demand to talk to an attorney.

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5. **WHEN YOU EXERCISE YOUR RIGHTS.** When you tell your questioner that you do not want to talk to them without an attorney, all questioning must stop. Speak to an attorney as soon as possible. Usually, an attorney from the 653d Trial Defense Team is reasonably available at no cost to you. You may discuss the matter under investigation with them in complete confidence. Because all of the 653d defense counsel are M-Day, it will take some time for your request for counsel to get a response and your commander should allow you a reasonable time to coordinate advice. However, you cannot sit idly by waiting for someone to come to you. You must be actively seeking counsel. Once you consult with defense counsel, you may then decide whether it is in your best interest to make a statement. Your defense counsel will ensure that you are interviewed fairly and will read any written statement you make to be sure it is accurate. Continue to remain silent until a military defense counsel can be reached. Ask the police to contact someone from your unit. If you are released to your unit, do not discuss your case with anyone – this includes police, social workers, psychiatrists, chaplains, anyone in your chain of command, your co-workers, friends, roommates, girl or boyfriends or even your spouse.

6. **WHEN YOU ARE ENTITLED TO AN ATTORNEY.** You are entitled to a military defense attorney when:

a. You are a suspect of a crime. Your attorney will discuss your rights as a suspect, including your right to have your attorney present for questioning, lineups, and writing and voice samples.

b. Anyone reads you your rights. Your attorney will discuss your rights as a suspect and the charges against you.

c. Anyone reads you an Article 15. Your attorney will advise you regarding the charges against you, possible defenses, and your rights during Article 15 proceedings.

d. Charges are preferred against you. Your attorney will represent you at all stages of the criminal proceedings, including the Article 32 hearing and at all court hearings.

e. You are being administratively separated (chaptered) from the Army. Your attorney will consult with you regarding ways to challenge the chapter and will represent you at an Administrative Separation Board if you are entitled to one.

7. POC is the undersigned. The 653d Trial Defense Team may be reached at NGUT.JAG.653UT.TDS@ng.army.mil, or by filling out a request for counsel at www.ut.ngb.army.mil/jagtds/RFC.htm.



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